

**Engineer Improperly Suspended
for Sealing Architect's Plans**

by

James R. Keller

Herzog Crebs LLP

100 North Broadway, 14th Floor

St. Louis, MO 63102

314.231-6700

314.231.4656 (fax)

jrk@herzogcrebs.com

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A Missouri engineer can modify and then seal the plans of a Missouri architect and thereby become personally responsible for any defect in both his modifications and the architect's original plans. He should not, however, be suspended for doing this and lose his license to practice engineering for three years in Missouri.

The Missouri Supreme Court recently reached this result and reaffirmed the practice of many design engineers who have been doing this for years in *Bird v. Missouri Board of Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects*, 2008 WL 3906365 (Mo.), decided August 26. It also left open a couple of questions to be resolved in later cases. This opinion is a must-read for all Missouri engineers, architects and anyone else acting as or involved with a design professional.

In 2001, Landmark Builders of Blue Springs, Inc. contracted with architect Allen McInnis to design Cardinal Woods Commercial, a warehouse and office for Landmark in the City of Independence. McInnis prepared the drawings for the site plan, landscape, architecture and structure. He did not sign or seal them.

Landmark then submitted the unsealed plans to the Planning Commission for the City of Independence. The Commission rejected them and required modifications before approval.

Landmark asked McInnis to modify the plans, which he did and the Commission approved, but the Commission also required construction drawings. McInnis sent Landmark an invoice for \$17,000 for the additional work and would not sign or seal the plans until he received the additional compensation.

Landmark refused to pay more money. Instead, it contracted with Bruce Bird's engineering firm to complete the plans, secure approval from the City of Independence and serve as the engineer of record. Bird completed the modifications, signed and sealed the plans. Landmark submitted them for approval.

McInnis then informed the Commission he had not authorized his drawings to be used in Bird's final set of plans and drawings. He told Landmark it would be sued and he already had initiated disciplinary proceedings against Bird, the genesis of this case. McInnis also filed a police report against Bird, alleging that Bird stole McInnis' drawings.

The Missouri Board for Architects, Professional Engineers, and Professional Land Surveyors and Landscape Architects (the "Board") brought disciplinary proceedings against Bird. The Administrative Hearing Commission (AHC) that heard the complaint decided that Bird had violated 4 CSR 30-3.030(7) and 4 CSR 30-13.010 of Missouri's Regulations. It suspended Bird's license to be an engineer in Missouri for three years plus another year of probation after that.

The Board argued that Bird signed and sealed plans that included considerable work from architect McInnis in violation of Missouri's Regulation that the engineer had to and in this case did not personally supervise the architect's work. As the Supreme Court framed the question on appeal: "Can a licensed professional engineer be disciplined for affixing his seal to building plans that were drafted in large part by a licensed architect whose work was not done under the engineer's 'immediate personal supervision'?"

Bird thoroughly reviewed both his changes and McInnis' work for safety and quality and accepted responsibility for them. That was not the issue. Rather, it was whether he could in fact seal work from another design professional.

The Supreme Court decided that the Regulations do not function to protect McInnis' effort to recover in his fee dispute with Landmark. Instead, the Regulations are there to protect the public.

Therefore, the Regulations do not prohibit an engineer from incorporating, signing and then sealing the work of another design professional, in this case an architect. The court concluded that the Regulations apply to supervision of unlicensed employees but not to reviewing the work of licensed professionals such as McInnis.

In reaching this result, the Supreme Court left unanswered a couple of questions. First, the Court clearly noted that the appeal "does not

involve delineating the sometimes overlapping roles of architects and engineers.”

The Court was referencing that the AHC’s decision had held that Bird’s conduct was not the unauthorized practice of architecture because it fell within the scope of his engineering license. The Court expressed no opinion on this point.

Also, the Court noted that when Bird received McInnis’ drawings, Landmark’s attorney assured him that Landmark had paid McInnis for them and thus Landmark owned the drawings. The Court stated: “Whether the attorney was correct is not properly the subject of this disciplinary proceeding.”

As is typically the case, Missouri’s high court answers the question before it and leaves to another day other issues that are not central to the outcome and probably have not been fully briefed and argued for appellate court consideration.

James R. Keller is a partner at Herzog Crebs LLP where he concentrates his practice on construction law, complex business disputes, real estate and ADR. He also is an arbitrator and a mediator.